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LUD 5298.4 DIV (10105901)

<u>CERTIFICATE OF MAILING</u> <u>37 C.F.R. § 1.8</u>	
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Date 6/5/06	Name: Fani Malikouzakis

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Kohei MIYAZONO et al.  
Patent No. : 6,982,319  
Issue Date : January 3, 2006  
Serial Number : 09/903,068  
Filing Date : July 11, 2001  
For : ANTIBODIES WHICH BIND SPECIFICALLY TO  
ACTIVIN RECEPTOR LIKE KINASES  
Art Unit : 1647  
Examiner : Robert S. Landsman

Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REQUEST FOR PATENT TERM ADJUSTMENT  
(37 C.F.R. § 1.702 ET SEQ. 37 C.F.R. § 1.705(D), 35 U.S.C. § 154)

SIR:

Applicants note that, according to USPTO calculations, they are not entitled to any term extension on the subject patent. They disagree, and request reconsideration. Please charge any fees due herewith to Deposit Account No. 50-0624.

Applicants were not aware until they received their Issue Notification letter that no adjustment to the term would be made.

The facts are as follows. The subject application was filed on July 11, 2001, making it eligible for patent term extension.

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On May 18, 2003, a Notice of Allowance was received. At that time, an extension of 8 days was indicated, because the time between the filing of the application (July 11, 2001), and the issuance of a restriction requirement on September 19, 2002, was 8 days more than the 14 month period prescribed by 37 C.F.R. § 1.702 et seq.

Applicants agreed with that calculation, and paid the issue fee, on July 30, 2003, submitting formal drawings as were required. This was a timely filing.

On February 4, 2004, however, the USPTO reopened prosecution, to raise issues not raised previously. Applicants were given 2 months to respond, and did so, in 19 days, i.e., on February 23, 2004. The USPTO received the papers on February 25, 2004. Clearly, applicants were diligent.

On April 6, 2004, the Examiner telephoned the undersigned, requesting further amendments. These were filed the same day.

What then followed is at unexplainable mess, caused by the USPTO.

First, on April 21, 2004, the USPTO issued a second Notice of Allowance. Why they did so, is not clear; however, on April 29, 2004, applicants sent a letter indicating that they had paid the issue fee, and sent evidence thereof.

Then, 11 months later, the USPTO issued yet a further request for sequence information, even though 2 Notices of Allowances had been sent.

Why were allowances sent if the sequences were faulty? In any event, applicants sent additional sequence information on March 14, 2005.

What followed was a Notice of Abandonment on September 19, 2005, for failure to pay the issue fee! This Notice referred to the second Office Action ; however, applicants had already paid an issue fee, and advised the USPTO thereof.

Applicants then had to file a petition to revive the application, due to USPTO error, and that was decided on November 2, 2005. The patent issued on January 3, 2006.

It is believed that applicants did not, at any time fail to engage in reasonable efforts to conclude prosecution. Every step of the prosecution indicated that applicants responded to every action by the USPTO promptly

In contrast, the USPTO (i) issued additional requirements after allowance, (ii) issued duplicate Notice of Allowance at different times, and (iii) abandoned the application, for no reason.

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As a result the total prosecution time, from filing to issuance, i.e., July 11, 2001 to January 3, 2006, is well over 36 months. Applicants believe they are entitled to the time different between July 11, 2004 (36 months), and January 3, 2006, which is in fact 533 days.

Further, the patent did NOT issue within 4 months of the payment of the issue fee on February 25, 2004. Applicants are entitled to that time as well, i.e., all time after June 25, 2004, through January 3, 2006, which is another 220 days. The total amount of time believed due to applicants, is 753 days.

For the foregoing reasons, it is believed that term adjustment is proper and appropriate action is requested.

Respectfully submitted,

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